IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

GOVERNMENT APPEAL No. 1893 of 2001
(Old No. 399 of 1999)

State ...Appellant

Versus

1. Suresh S/o Jagan
2. Sanjay Tyagi S/o Suresh
3. Nathiram S/o Manpal

....Opposite Parties

Dated: April 3, 2007

Sri Amit Bhatt, learned Additional G.A. for the State
Sri S.P.S. Panwar, Sr. Advocate assisted by Sri H.C. Pathak and Sri P.Miglani, ld. counsel for the opposite parties

HON. DHARAM VEER, J.

This appeal has been preferred against the judgment and order dated 30.10.1998 passed by Additional C.J.M., Hardwar in Criminal Case No.807 of 1998, State Vs. Suresh and another under Section 392 and 411 of I.P.C., P.S. Kankhal, District Hardwar.

2. The prosecution story in brief is that complainant was having an electric and book shop in which he and his brother was sitting and they do the business of hiring VCR and colour television on rent. On 1.4.1987 at 8.00 p.m., four persons came on his shop and told him to install the said set at the house of Chandraprakash Mishra at Jwalapur. Since the complainant was known to him hence he went with videoset. As soon as he reached near Umraoji garden from Anandmayi road, the accused persons tied him with string by showing knife and ran away by taking the set with them. By somehow, he came on the road, one Ranveer, a milkman came and released him from string.

Thereafter, he came home and lodged the report under section 392 IPC and the report was lodged at 11.00 p.m. at P.S. Kankhal, Distt. Hardwar. Thereafter, on 11.4.1987, one V.C.R., two cassettes and one colour television Hotline was recovered by the Police and the Fard was prepared and the accused were produced in the court and subsequently the charge-sheet against the accused persons were submitted. The charges under Section 392 and 411 were framed against the accused persons. The accused persons denied the charges levelled against them and claimed to be tried. The prosecution in support of his case produced PW 1 Vinod Kumar Sharma, P.W.2 Shiv Kumar and in documentary evidence, FIR Ex.Ka-1 was produced. Apart from this, the papers relating to identification report were produced as Ex.Ka-2 to Ex.Ka.-5 and Ex.Ka-6 was produced as watch. The T.V. and V.C.R. was produced as Ex.-1. After considering the entire facts and circumstances of the case, the CJM, Hardwar acquitted the accused persons for an offence punishable Section 392 and 411 I.P.C. Feeling aggrieved, the Government has come up in appeal before this Court and has requested for the leave to appeal.

3. In the memo of appeal, the State has only mentioned the names of accused persons but their addresses have not been mentioned. On 08.11.2005, this Court directed for summoning the lower court record and in compliance of that order, Additional C.J.M., Hardwar has informed that as per the report from Officer In-charge, Record Room, Saharanpur, the record of the case has been weeded out on 10.6.2005. In a judgment rendered by Allahabad High Court in the case of *Aziz*

Khan Vs. State of U.P. reported in ACC 1992 (29) 223, it was held as under:-

> ***"Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence."***

4. Even otherwise, after considering all the facts and circumstances of the case and on the basis of judgment and order dated 30.10.1998 on record, I do not find any incorrectness, illegality or impropriety in the impugned judgment passed by learned Additional C.J.M., Hardwar. Hence, I am of the considered view that the leave to appeal cannot be granted to the State.

5. Consequently, the leave to appeal is refused and accordingly the appeal is also dismissed.

(Dharam Veer, J.)

Rajeev Dang